

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 MUR 6069) **CASE CLOSURE UNDER THE**
) **ENFORCEMENT PRIORITY SYSTEM**
 WEGNER FOR CONGRESS)
 AND MIKE MATHEWS, AS)
 TREASURER)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, when compared to other, higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 6069 as a low-rated matter. The complainant, Steven Fernlund, alleges that the Wegner for Congress Committee, and Mike Mathews, in his official capacity as treasurer ("Committee"), failed to report all of the Committee's contributions, filed required disclosure reports late or not at all, and may have accepted cash contributions in excess of \$100 in the 2008 contest for Nevada's 1st Congressional District seat. The complainant alleges that the small amounts of contributions the Committee reported in its 2008 disclosure reports, along with the relatively low amount of expenditures it reported, "defies rational belief" given that the candidate "won a contested major-party primary, and now is conducting a full-fledged general election campaign...."

Kenneth Wegner responded on behalf of the Committee, asserting that the Committee was, in fact, current and complete in all of its reports to the Commission and it did not have any salaried staff. Mr. Wegner noted that he had been involved in a car

29044234596

1 accident, which had hampered his campaign efforts. Additionally, Mr. Wegner claimed
2 that notwithstanding his accident, he won his party's nomination with only \$8,005 in
3 advertising buys and had collected very little in campaign contributions during the
4 election.¹

5 Upon a review of the public record it appears that the Committee may have filed
6 the following reports beyond the filing deadline: 2008 July Quarterly Report (filed on
7 August 27th, 43 days late); 2008 12 Day Pre-Primary Report (filed on September 23rd, 54
8 days late); and 2008 Pre-General Report (filed on October 24th, 1 day late).

9 In light of the candidate's personal circumstances during the period when the
10 disclosure reports were due coupled with the de minimis nature of the reporting
11 violations at issue, and in furtherance of the Commission's priorities and resources,
12 relative to other matters pending on the Enforcement docket, the Office of General
13 Counsel believes that the Commission should exercise its prosecutorial discretion and
14 dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). This Office also
15 recommends that the Committee, and its treasurer, be cautioned that their apparent failure
16 to file disclosure reports timely may have potentially violated 2 U.S.C. § 434(a).

17 **RECOMMENDATION**

18 The Office of General Counsel recommends that the Commission dismiss
19 MUR 6069, send a cautionary notification to Wegner for Congress Committee and Mike
20 Mathews, in his official capacity as treasurer, close the file, and approve the appropriate
21 letters.

22
23

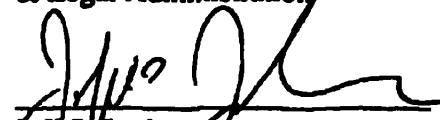
¹ The candidate provided a letter from Wegner's doctor and documents from the Committee's ad agency in support of its response.

Thomasenia P. Duncan
General Counsel

BY:



Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

3/9/09

29044234598